

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8572 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

BHAVESH BACHUBHAI KOLI THROUGH FRIEND ASHOK THADARAM CHHABADA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/02/99

ORAL JUDGEMENT

1. The petitioner in this writ petition under Article 226 of the Constitution of India has challenged the detention order dated 29.6.1998 passed by the Commissioner of Police, Rajkot City, under section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (for short 'PASA') and has prayed for immediate release from illegal detention.

2. From the grounds of detention contained in Annexure-B, it appears that the detaining authority was subjectively satisfied from registration of five cases under various sections of the IPC as well as from the statements of three confidential witnesses that the petitioner was a 'dangerous person'. Accordingly, the impugned order of detention was passed for preventing activities prejudicial for maintenance of public order.

3. This order has been challenged by the learned Counsel for the petitioner only on one ground; that the activities of the petitioner cannot be said to have been prejudicial for maintenance of public order. It implies that the subjective satisfaction of the detaining authority that the petitioner is a 'dangerous person' is not under challenge. This satisfaction could not be under challenge for the obvious reason that four cases of theft etc. were registered against the petitioner under sections 379, 380, 457, 454 of the IPC. These offences are punishable under Chapter XVII of the IPC. Besides these, three confidential witnesses have also narrated incidents which were offences punishable under Chapter XVI of the IPC. In view of repetition of such activities, the petitioner was rightly considered to be a 'dangerous person' within the meaning of section 2(b) of PASA.

4. So far as the other subjective satisfaction is concerned, it is difficult to accept the contention that the detaining authority, from the material on record, was satisfied that the activities of the petitioner were prejudicial for maintenance of public order. Even a 'dangerous person' cannot be detained under PASA unless his activities are found to be prejudicial for maintenance of public order.

5. The distinction between the 'law and order' and 'public order' has been settled in catena of decisions by the Apex Court. From the material on record, it can be said that two types of material were available to the detaining authority on this point. The first was registration of five cases of theft against the petitioner. But these cases do not indicate that when these offences were committed, the petitioner indulged in activities which were prejudicial for maintenance of public order. The opening part of the grounds of detention is general in nature.

6. Then remains statements of three confidential witnesses. The first witness has stated about the incident dated 5.5.1998 which took place at 11.00 a.m.

The witness was interrogated on 23.6.1998. In short, the statement of the witness is that the petitioner purchased certain articles from the witness and when the latter demanded price of the articles, the petitioner became annoyed; he abused the witness and beat him in public place; the witnesses showed his desire to lodge a complaint whereupon he was threatened by the petitioner with open knife; crowd gathered there; the petitioner ran towards the crowd with open knife on account of which an atmosphere of fear was created; the goods were scattered here and there. From this statement, it can hardly be said that the public at large or a particular section of public was affected. No injury was caused either to the witness or to any member of public.

In the statement of the second witness, incident dated 25.5.1998 which occurred at 1.30 a.m. in the night as well as the incident which was repeated on the second day were narrated. In brief, the allegation is that the witness was beaten by the petitioner on the suspicion that he was a police informant. The petitioner showed a knife and threatened to kill the witness. Crowd collected at the spot; the petitioner ran towards the crowd with open knife and an atmosphere of fear was created.

The third witness has stated about the incident dated 7.5.1998 which took place at 4.00 p.m. The petitioner demanded Rs. 500/- from the witness. The witness refused whereupon he was abused and beaten in public place. He was thrown on the ground and Rs. 180/- were taken out from the pocket of the witness by the petitioner and the shirt of the witness was torned; knife was shown to the witness; crowd collected; the petitioner ran towards the crowd with knife on account of which atmosphere of fear was created.

7. These incidents, to my mind, were the incidents purely within the domain of law and order and not activities prejudicial for maintenance of public order. In the counter-affidavit of the detaining authority, it is nowhere found that he has mentioned that he was satisfied from the statements of confidential witnesses that the activities of the petitioner on these three incidents were prejudicial for maintenance of public order. On the other hand, from the counter affidavit which is a limited counter affidavit, the only inference is that the detaining authority was satisfied that the petitioner was a 'dangerous person' and hence it was necessary to detain him for maintenance of public order. The detention of a person for apprehended breach of

public order is one thing and detention of a person on the ground that his activities were prejudicial for maintenance of public order is another thing. On imaginary apprehension, even a dangerous person cannot be detained preventively unless it is found that his activities, even on one occasion, were prejudicial for maintenance of public order.

8. The learned AGP cited a Division Bench pronouncement of this Court in the case of Iqbal Hussein Vs. Commissioner of Police, 1989(2) GLR 1005, but this case is distinguishable on facts. The Division Bench in this case found that the activities of the petitioner resulted in injuries to the victims, namely to the witnesses on two occasions and also to the members of public who gathered at the spot to save the two witnesses. It was on these facts the Division Bench held that the activities of the petitioner not only injured and affected the victims, namely the two witnesses but also injured members of public. In the case before me, there is no allegation that any injury was caused by the petitioner either to any of the three witnesses or to the members of public. Consequently, these activities cannot be said to be prejudicial for maintenance of public order.

9. The second case cited by the learned AGP was of Vijay Rambrij Yadav Vs. Commissioner of Police, 1993 (1) GLH 477. In this case, two points were laid down. The first was that the statements of witnesses cannot be said to be vague merely because exact date is not mentioned or the name of the associate of the petitioner is not given. The second point laid down was regarding activities prejudicial for maintenance of public order. In this case also, the facts are altogether different. It was laid down that the question whether a particular act affects the law and order situation only or is prejudicial to maintenance of public order also, would depend on the impact, reach and effect of individual acts on the society. In this case, the petitioner detenu was released after undergoing conviction and sentence under section 25 of the Arms Act. He was preventively detained by the authorities on account of four incidents relating to beating of persons and extorting money, taking place within a period of 15 days. It was on these facts, held that the petitioner-detenu, if allowed to continue his activities, they are bound to affect the public order. Here also, injuries to the persons were caused within a span of 15 days and witnesses were beaten four times in short intervals. On the ground of causing injuries to the witnesses, it was held in this case that the

activities were prejudicial for maintenance of public order. This case can also be distinguished on the facts of the case before me that no injury was caused either to the three witnesses or to the persons who gathered to save those witnesses. Even the detaining authority did not state in his counter affidavit that these three incidents were prejudicial for maintenance of public order.

10. The non-application of mind of the detaining authority to the statement of witness no.3 is also reflected from the grounds of detention. In this, the time of occurrence is not disclosed. The learned AGP was asked to file affidavit disclosing, on the basis of original statement, as to what was the time of incident narrated by the third witness. But to my surprise, no additional affidavit has been filed till now. It can, therefore, be said that any amount of assertion and deposition by the detaining authority that he has applied his mind to the statements of the confidential witnesses cannot be accepted to be true. If the subjective satisfaction was the result of non application of mind to the entire material on record, it would certainly vitiate the detention order.

11. For the aforesaid reasons, the impugned order of detention cannot be sustained and it has to be quashed. The writ petition, therefore, succeeds and is allowed. The impugned order of detention dated 29.6.1998 is hereby quashed. The petitioner shall be released forthwith unless required in any other case.

mhs/-